

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14447, of Ray T. Sullivan and Mary M. Cairns, pursuant to Sub-section 8207.2 (3108.1, DCMR 11) of the Zoning Regulations, for a special exception under Paragraph 7106.11 (2003.1, DCMR 11) to continue to use the subject premises, first floor, for retail sales of fabrics, home furnishings and small gifts in an R-3 District at premises 1301 - 35th Street, N.W., (Square 1228, Lot 805).

HEARING DATES: July 9, 1986, March 25 and May 20, 1987
DECISION DATE: May 20, 1987 (Bench Decision)

ORDER

The application was originally scheduled for the public hearing of July 9, 1986. During the course of the proceedings, it came to the Board's attention that a condition of BZA Order No. 14117, the previous order of the Board on the subject property, limited approval of the use to April 11, 1986. The reason for the time limitation, referred to in Finding of Fact No. 20 of that order, was to impose a common termination date on this use and two additional nonconforming uses operated by the same lessee in the immediate area so that the Board could review the full impact of all three facilities on the immediate neighborhood. The representative of the lessee further stated that the lessee had relocated from one of the two other locations. The lessee further stated that the Certificate of Occupancy to use the second location, premises 1300 - 35th Street, N.W., approved by BZA Order No. 13863, did not set forth a termination date so no application for renewal of the special exception was filed. Review of prior BZA Order Nos. 13863 and 14117 evidenced that approval in both cases terminated on April 11, 1986. The Board directed the applicant to file an application to continue the use of premises 1300 - 35th Street, N.W. immediately. The Board continued the public hearing on the subject case pending receipt of the related application and directed staff to schedule both applications for hearing on the same date.

The subject application was rescheduled for the public hearing of March 25, 1987. The application appeared on the preliminary calendar on that date due to the applicant's failure to comply with 11 DCMR 3317.4, 3317.5, and 3317.7. The applicant failed to file a sworn affidavit demonstrating that the property had been posted with a

notice of the hearing as required by the Rules. A representative of the applicant testified that the property had inadvertently not been properly posted and requested a continuance of the public hearing date. The Board continued the application to the public hearing of May 20, 1987.

At the public hearing of May 20, 1987, the application was called several times. There was no response from the applicant or any other person representing the applicant. The Board had not received any communication from the applicant that it would not appear at the public hearing. The Board notes that the application was originally filed on April 11, 1986, and has remained pending in excess of one year even though three public hearing dates have been scheduled.

Upon consideration of the foregoing facts it is ORDERED that the subject application is DISMISSED for failure of prosecution.

VOTE: 5-0 (Patricia N. Mathews, Charles R. Norris, Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to DISMISS).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

JUL 13 1987

FINAL DATE OF ORDER: _____

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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